

INDEX

OF

PRINCIPAL MATTERS.

ACT, *sous seing privé*.

- 1 When it appears *aliunde* that it was executed, as it purports, it will have effect against third persons from the day of its execution. *Donbrere vs. Grillier's syndic.* 171
- 2 So, when possession has followed its execution. *Same case.* *id.*

ADMINISTRATOR.

- 1 One appointed in another state cannot maintain an action here. *Le Cense vs. Cottin.* 475
- 2 A motion to dismiss his suit, because his letters were granted in another state is too late, after a plea on the merits. *McGraw vs. Browder.* 17
- 3 And he will recover, even where he sues as administrator. *Same case.* *id.*

AGENT.

- 1 Is a competent witness. *Robertson vs. Nott.* 212
- 2 Same point. *Pratt vs. Flowers.* 333
- 3 The approbation of his act, by the principal, cannot be recalled. *Breedlove & al. vs. Wamack.* 181
- 4 The receipt of part of an estate from an agent, by the principal is not evidence of his ratification of a com-

- promise, by which a part of the estate was abandoned by the former. *Kilgour vs. Ratcliff's heirs.* 292
- 5 He who undertakes to collect a debt, by suit, is bound to issue a *ca' sa'* if the money cannot otherwise be made. *Flowers vs. M'Micken.* 132

AMENDMENT.

- For the furtherance of justice may be allowed at any stage of the proceedings. *Debuys & al. vs. Mollere.* 626

APPEAL.

- 1 It does not lie from an order for the production of the bank book of a syndic. *Bargeun & al. vs. their creditors.* 496
- 2 If less than three hundred dollars be claimed, no appeal lies although the defendant offer a set off, which added to the claim, will make it exceed that sum; nor although accounts to a larger amount were investigated during the trial. *Breedlove & al. vs. Young.* 314
- 3 If the appellant give bond, but does not prosecute his appeal, he cannot on a subsequent one, avail himself, of this bond. *Lavigne vs. May.* 628
- 4 And the appellee may have the appeal dismissed, although he did not appear and take the objection, on the return day. *Same case.* *id.*
- 5 If a case be submitted to a jury on special issues, the evidence cannot be legally brought up. *Weimprender's syndics vs. Trepagnier.* 559
- 6 The clerk's certificate that he has given a full transcript, does not enable the supreme court, to examine the case on the merits. *Burch vs. Chew.* 67
- 7 When a suit has been tried entirely on documents, the fact should be certified by the judge, and not by the clerk. *Millon vs. Delisle.* 339

- 8 Nothing can be assigned, as error apparent on the face of the record, that could have been cured, by evidence legally introduced. *Piedbas vs. Milne.* 537
- 9 Same point. *Fitz vs. Cauchoir.* 265
- 10 After suffering judgment by default, the defendant cannot assign, as error apparent on the face of the record, the absence of evidence to establish the facts alleged in the petition. *Same case.* id.
- 11 In matters emphatically proper to be tried by a jury, the supreme court does not take upon itself to decide on other evidence than that laid before the jury. *Bowman vs. Flowers.* 267
- 12 Therefore, although the rejected evidence come up, the case will be remanded, if there be contradictory evidence and a jury was prayed for. *Pratt vs. Flowers.* 333
- 13 The supreme court will not disturb a verdict not manifestly contrary to the evidence. *Cole vs. La. Ins. Co.* 165
- 14 But, it will not deem itself bound by one, evidently contrary to law. *Dressen vs. Cox.* 631
- 15 Nor by one, in which there arises a strong presumption that it does not meet the justice of the case. *Mayor &c. vs. Griffon.* 653
- 16 A judgment on a question of fact is affirmed, when it does not clearly appear erroneous. *De Vanworth vs. Bouchon's heirs.* 536
- 17 Same point. *Barrow vs. Sterling.* 55
- 18 When the case is doubtful on the merits, the opinion of the inferior court prevails. *Latrobe's curator vs. Sinnott.* 580
- 19 The judgment will be affirmed, if the appellant does not bring up the case, in such a manner that it may be examined on the merits, if there be no bill of exceptions, &c. *Hunter vs. Abert.* 328
- 20 If a judgment be not incorrect in what it decides, it will

- not be reversed, because it does not entitle justice. *Pequet & al. vs. Götis.* 121
- 21 Nor, if the case turns on the credit of a witness. *Morris vs. Hatch.* 492
- 22 On a bill of exceptions, those objections alone are examined, that were made below. *Pratt vs. Flowers.* 333
- 23 He, who did not ask for a new trial below, will not obtain one above, on the ground that the verdict is not according to the testimony. *Morgan vs. Bickle & al.* 377
- 24 If the finding of the jury be contradictory, the case will be remanded. *Weinprender's syndics vs. Trepagnier.* 558
- 25 If the judgment of the court of probates be bottomed on an alleged compromise, and reversed on the ground none did legally take place, the case will be remanded to be heard on the merits. *Brown & al. vs. Brown's ex'ors.* 441
- 26 A case was remanded to enable a party to obtain the testimony of the judge *a quo*, although, under the existing laws, he had correctly referred it. *Ross & al. vs. Buhler & al.* 312
- 27 A rehearing will be refused, on a technical objection, if points were not filed. *Mitchel vs. Gervais.* 568
- 28 Although a curatrix is not suable, in a district court, if she be and have judgment, and the plaintiff appeal, he shall pay costs in both courts, as he committed the first error. *Saunders vs. Highland's curatrix.* 238
- 29 Executors cannot be received in their personal capacities, as sureties on an appeal bond, on judgment against them, in their representative character. *Lafon vs. Lafon's ex's.* 571
- 30 Property to the amount of \$400, does not enable the possessor to be surety to the amount of \$600. *Same case. id.*
- 31 The denial of a right claimed frequently furnishes ground for an appeal, when the grant of it would not. *Bargebur vs. their creditors.* 400

- 32 When judgment is amended, in favor of the appellee, damages cannot be awarded against the appellant for a frivolous appeal. *Desbrieux vs. Derbonneaux.* 215
- 33 A case will not be remanded for irregularity, in the form of proceeding, if justice can otherwise be done. *Canez & al. vs. Schr. James McKintay.* 307
- 34 Inconsistency of pleas, not objected to below, cannot be complained of, on the appeal. *Ray & al. vs. Cannon & al.* 26
- 35 If a party establish his right, under a title different from that set up, the judgment he may obtain will not be disturbed on the appeal, if it otherwise do complete justice. *Wyer vs. Winchester.* 69

ARRAY.

- 1 It is not a good challenge to it, that forty-nine jurors were drawn and put on the venire. *Debuys & al. vs. Molere.* 625
- 2 Same point. *Ramos vs. Bringer.* 192
- 3 In such a case a challenge to the poll of the juror, illegally drawn, is the proper remedy. *Same case.* id.

ASSIGNEE.

- 1 That of a debt not negociable, may sue in his own name. *Kilgour vs. Rutcliff's heirs.* 292
- 2 That of a debt in suit may claim the benefit of a judgment rendered after the assignment. *Same case.* id.

ATTORNEY.

- 1 In fact, whether he can accept a succession? *Le Ceme vs. Cottin.* 475
- 2 The absence of one of the attorneys, employed in a suit, is not a ground for a new trial, when the other declared himself ready. *Flowers vs. M'Micken.* 132
- 3 Payment to an attorney, who institutes a suit, but does

not proceed beyond the service of the citation, cannot be allowed, without some other evidence of its legitimacy. *Cullen vs. Cerras & al.* 157

ATTACHMENT.

- 1 It lies before a transfer of property by sale and delivery. *Olivier vs. Townes.* 93
- 2 Even, when a different rule prevails, in the debtor's domicile. *Same case.* *id.*
- 3 And on the debtor's property, in the hands of a person, who has a lien. *Skillman vs. Bethany & al.* 104
- 4 But the lien will prevail over the right of the attaching creditor. *Same case.* *id.*
- 5 Also, in a suit for damages. *Cross vs. Richardson.* 323
- 6 The affidavit is sufficient, if it will support an indictment, if the facts be not true. *Same case.* *id.*
- 7 Proceedings on attachment, without a citation are null. *Cochran vs. Smith & al.* 552
- 8 Until the defendant be properly brought in, no judgment can be given against the garnishee. *Mackee & al. vs. Cairnes & al.* 599.
- 9 The cases, in which an attachment can be taken out for damages are those, where the amount does not depend on an opinion of the wrongs inflicted, or the failings or reputation of the plaintiff, but on a knowledge of the injury done to property. *Cross vs. Richardson.* 323

BAIL.

The bond of a person held to bail, on an inaccurate affidavit, will not be set aside, if it be otherwise sufficiently explicit and certain. *Turcas vs. Rogers.* 655

BAILEE.

He cannot oppose to the barter the right of a third person to the thing bailed. *Butler vs. Kenner & al.* 274

PRINCIPAL MATTERS.

711

BILL OF EXCEPTIONS.

None lies to a final judgment. *Moore vs. Marcell & al.* 249

BILL OF EXCHANGE.

- 1 If it be accepted on the promise of a mortgage, which is afterwards executed, on the mortgagor's failure, the time of the promise will be considered, on an application to set the mortgage aside. *Wyer's syndics vs. Sweet & al.* 588
- 2 Notice of protest is necessary to charge the drawer, although the bill was given in discharge of a debt. *Penn vs. Poumeirat.* 541
- 3 And this whether the parties be merchants or not. *Same case.* *id.*
- 4 A promise to pay the bill, if duly protested, does not bind to pay it, if afterwards protested. *Same case.* *id.*
- 5 Parole evidence is admissible to prove an agreement, between the parties to a bill, that it should be negotiated. *Robertson vs. Nott.* 122

BOND.

- 1 A party, who subscribes one in blank, is bound by what is afterwards written. *Breedlove & al. vs. Johnson.* 517
- 2 No action lies on a bond to obtain an injunction, which is afterwards dissolved by consent. *Same case.* *id.*
- 3 The landlord's lien is of a higher nature, than the claim of the U. S. or a custom-house bond. *Jackson vs. Oddie.* 555
- 4 An injured party may bring suit on a marshall's bond, in his own name. *Hernandez & al. vs. Montgomery.* 422
- 5 It is a breach of such a bond not to have the proceeds of a sale ready in court. *Same case.* *id.*

See APPEAL 3, 29, 30 BAIL.

CARRIER.

- If the master of a steam-boat fail to deliver goods shipped,
he is responsible for the invoice price. *Lafon's ex's.*
vs. Phillips & al. 235

CLERK.

- 1 The assistance of the attorney-general is not necessary in
the prosecution for the removal of a clerk. *State vs.*
Winthrop. 527
- 2 Frequent intemperance and habitual indolence, is too gen-
eral a charge, in such a case, and evidence cannot
be received to support it. *Same case.* *id.*
- 3 A clerk will not be removed, for having acted incautiously,
if he thereby have occasioned injury to no one. *Same*
case. *id.*
- 4 But he will be, if he procures the means of producing an
abortion. *State vs. Bell.* 683

CONTRACT.

- 1 In a synagmatical one, the dissolving condition is always
included. *Turner vs. Collins.* 605
- 2 But, it must be sued for, and a delay may be granted to
the defendant, according to circumstances. *Same*
case. *id.*

COURT OF PROBATES.

- 1 If the property of a succession be illegally sold, the action
of warranty arising on it cannot be brought in the
court of probates. *Montamat and wife vs. Debon.* 392
2. The purchaser of property, at a sale of the court of pro-
bates, acquires it free from incumbrances. *De Ende*
vs. Moore. 336
- 3 Same point. *Lafon's ex's. vs. Phillips & al.* 225
- 4 Any irregularity in the sale, must be complained of, be-

PRINCIPAL MATTERS.

713

fore the homologation of the curator's accounts. *Same case.*

225

- 5 Claims against vacant estates are exclusively cognizable in the court of probates. *Miles vs. Ford & al.*

439

See MORTGAGE 2.

CONVEYANCE.

- 1 That, which gives all a debtor's property to one creditor, who has no legal preference, is fraudulent in both. *Hodge vs. Morgan.*

61

- 2 If it be attacked as such, it lies on the alienee to shew there was other property. *Same case.*

id.

CORPORATION.

It is suable only, by the name given it in its charter. *Hill vs. Telsier.*

539

CREDITOR.

He may use all legal means against his debtor in solido.

Maxwell & al. vs. Union.

140

EVIDENCE.

- 1 Vouchers filed by an executor, in support of his accounts are *prima facie* evidence of their correctness. *Cacanovich & al. vs. Debon & al.*

596

- 2 Allegation, that a slave was a thief, authorises evidence that he was in the habit of stealing. *Chretien vs. Theard.*

582

- 3 The acknowledgment of a syndic that a counsel was employed by the insolvent, is not evidence of an agreement to pay him. *Seghers vs. Moulon's syndics.*

608

- 4 In a suit for rescinding the sale of a slave, on an allegation of the habit of running away, the deed of sale of the

- defendant's vendor is evidence for the plaintiff *Carrion vs. Rieffel.* 622
- 5 Evidence of the slave running away before the sale, may, with other circumstances, establish the habit. *Same case.* *id.*
- 6 Parole evidence may be received, when part of the written was lost or destroyed. *Morgan vs. Bickle & al.* 377
- 7 A plaintiff, who sues as guardian, needs not to prove his capacity, on the plea of the general issue. *Harper vs. Destrehan.* 389
- 8 The certificate of a commissioner, that a deposition was taken in his presence, is evidence that every thing appearing on it, was done in his presence. *Bowman vs. Flowers.* 267
- 9 The party objecting to evidence must, at the trial, state the particular ground of his objection. *Same case.* *id.*
- 10 Evidence which is immaterial cannot be received. *Gravier vs. Pitot & al.* 566
- 11 Declarations of the vendor, out of the presence of the vendee, may be received against the latter. *Guidry vs. Griot.* 13
- 12 But they are no evidence of fraud in the latter. *Same case.* *id.*
- 13 It is not a good objection to evidence, that it does not at once establish the fact it is introduced to prove. *Same case.* *id.*
- 14 The record of a suit, in which judgment was rendered for an intervening creditor, is sufficient evidence of the latter's claim. *Hodge vs. Morgan.* 61
- 15 Proof of the line in dispute being the real boundary of the younger tract (purporting to be bounded by the older) is strong presumptive evidence of its being the boundary line of the former. *Sterling's heirs. vs. Johnson.* 289

PRINCIPAL MATTERS:

715

- 16 The mention in a judgment discharging a debtor, that he took the oath required by law, is evidence of that fact. *Brainard vs. Francis* 150
- 17 An allegation that the plaintiff is owner, authorises evidence of possession. *Layton vs. Menard's syndics*. 515
- 18 Merchant's books are not evidence against other merchants, of the sale and delivery of articles there charged. *Johnson's syndics vs. Breedlove & al.* 518
- 19 A wife, claiming as her husband's legatee, cannot shew, by parol evidence, the simulation of a sale. *Guidry vs. Grivot*. 13
- 20 A party may be compelled to produce his books of account. *Godel vs. McLanahan* 435
- 21 The rules of the district court must be shewn to the supreme court, as other matters of fact. *Bowman vs. Flowers*. 268

EXECUTION.

- 1 A *fi fa'* may be levied on money, directed by the legislature to be paid to the defendant. *Flowers vs. Livingston*. 618
- 2 And the defendant cannot urge that it is in the constructive possession of a third person. *Same case*. *id.*
- 3 The defendant on a *fi fa'* may purchase the plaintiff's note, and suspend the execution of the writ, till his right to set off the amount of the note, be enquired into. *Caldwell vs. Davis*. 135

See AGENT 5.

EXECUTOR.

- 1 He is suable, before all the property be administered. *Herman vs. Flood*. 659
- 2 But the judgment ought not to be absolute, but that he pay in the course of administration. *Same case*. *id.*

- 3 When he sues on a cause of action, that did not exist in the testator, he needs not to sue as executor. *Butler vs. Kenner & al.* 274
- 4 An executor residing abroad, cannot resist the just claim of legatees here. *Hepp & al. vs. Lafont's ex's.* 446
- See EVIDENCE 1.

EXPERTS.

- 1 A report of experts cannot be objected to, because they swore, after it was reduced to writing. *Nott vs. Danney & al.* 1
- 2 Nor because the oath was administered by a justice of the peace. *Same case.* 11.
- 3 Altho' there be but one tract to be divided, they ought to make an inventory and appraisement of the several buildings on it. *Same case.* id.

FACTOR.

- 1 A factor, who sold at 60 days, cannot avert the consequence of his neglect to demand payment, by showing that it was his practice not to call upon his customers, till the amount due was sufficient to demand a note, and then take it at 60 days. *Gilly & al. vs. Logan & al.* 196
- 2 If he purchase goods for his principal and promises to ship them, he cannot afterwards renounce the bargain. *Same case.* id.
- 3 If at the expiration of the credit given, he takes a note to himself payable on a future day, he makes the debt his own. *Holmer vs. Beebe.* 367

FEES.

- Those of a parish judge, in selling the property of a succession are those fixed by the act of 1813. *Tessier vs. Silley & al.* 86

HEIR.

- 1 The heir, who fails to make a correct inventory, loses his right as a beneficiary one. *Le Ceme vs. Collin.* 475
- 2 He may make it before or after his acceptance, or he may accept under an inventory made by another. *Same case.* id.
- 3 The courts here do not lose their jurisdiction in a suit, by the death of the defendant, and the opening of his succession abroad. *Same case.* id.
- 4 An heir is only a creditor for his part of a debt, and cannot control that of his co-heir. *Kilgoun vs. Ratcliff's heirs.* 292
- 5 He cannot secure the object due, if it be not subject to a corporeal division. *Same case.* id.
- 6 He who takes the quality of an heir, accepts the succession absolutely. *Bingey vs. Cox.* 473
- 7 Whether a foreigner can be admitted as a beneficiary heir? *Le Ceme vs. Cotten.* 475

HIGHWAY.

- A suit may be maintained by an individual, in the district court for an obstruction of a highway. *Allard & al. vs. Lobau.* 317

HUSBAND & WIFE.

- 1 The matrimonial rights of a wife, who marries with the intention of an instant removal, into another country, will be governed by its laws. *Ford's curator vs. Ford.*
- 2 The want of the record of the marriage contract cannot be objected by the husband's representative. *Same case.* id.
- 3 Where they have different domicils, they have presumed to have submitted themselves to the law of that of the husband. *Same case.* id.

- 4 The wife may bind herself with her husband, renouncing certain laws. *Banks vs. Trudeau.* 39
 - 5 The creditor then is not bound to shew she derived any benefit. *Same case.* id.
 - 6 But she cannot bind herself as his surety. *Same case.* id.
- See EVIDENCE 19.

INSOLVENT.

- 1 Any of the creditors may compel a syndic to produce his bank book. *Bargebur & al. vs. their creditors.* 520
- 2 If he make a promise to his creditors to pay them, if he comes to better fortune, and dies, leaving sufficient property to pay three-fourths of his debts, a release of any creditor will not enure to the others, but to the debtor's heirs. *Le Changeur vs. Gravier's heirs.* 545
- 3 The Spanish insolvent laws were not repealed by the adoption of the constitution of the U. S. *Ray & al. vs. Cannon & al.* 26
- 4 The act of 1817, has not repealed the former laws relative to a voluntary surrender. *Kelsey vs. his creditors.* 36
- 5 It introduces a cumulative remedy, from which certain insolvents are excluded. *Same case.* id.
- 6 That the election was not legally made, because the persons who voted were not creditors, to the amount stated, nor had any claim, is too general a ground of opposition to the homologation of the proceedings. *Bierra vs. his creditors.* 47
- 7 The ten days allowed for filing an opposition to the appointment of a syndic, run from the close of the proceedings before the notary. *Dreux vs. his creditors.* 57
- 8 The testimony of an insolvent cannot be received in a suit between a creditor and the syndic. *Sighers vs. Moulton's syndics.* 608
- 9 He cannot employ counsel, after his failure, at the costs of the estate. *Same case.* id.

PRINCIPAL MATTERS.

719

- 10 Syndics have not the right of receiving the whole proceeds from the sale of a chattel, of which the insolvent was a part owner only. *Canex & al. vs. Schu. James McKinlay.* 307
- 11 Fraud is presumed on a insolvent. *Brandt & al. vs. Shaumburgh.* 329
- 12 A creditor may oppose the election of a syndic, not a creditor. *Clamageran vs. Degruy.* 156

See EVIDENCE 3.

INSURANCE.

- 1 The insured may, in all cases, abandon, as for a total loss, when the thing insured has been injured, to the half of its value. *Hyde & al. vs. La. State Ins. Co.* 410
- 2 Whether the insured may abandon, when there has not been a total loss, in case the insurer will not undertake to repair the vessel? Quere. *Same case.* *id.*
- 3 But the insurer cannot claim this right, if he abandon, without calling on the insurer to repair. *Same case.* *id.*
- 4 If a ship become unnavigable, from age or rottenness, the insurer is not responsible. *Same case.* *id.*
- 5 If the injury she has sustained be such, that her unsound and decayed parts cannot be used, as before the accident, without repairs equal to half the value, the insured may abandon. *Same case.* *id.*
- 6 But, if the repairs of the injury, arising from one of the risks insured against, will replace her in her former situation, no matter how unsound, the insured cannot abandon. *Same case.* *id.*
- 7 Insurance may be made on freight to be carried. *Colevs. La. Insurance Company.* 165

INDIAN.

- The issue of a female Indian is free. *Ulkers & al. vs. Poeyfarre.* 504

INTEREST.

- 1 Is included in the legacy of a debt. *Hepp & al. vs. Lafont's ex's.* 446
- 2 If interest be promised to be paid on a privileged debt, the interest is not privileged. *Roman vs. D'Auvergne.* 116

INTERROGATORIES.

- 1 If a party files his, under his opponent's, he cannot at the trial object that they are leading ones. *Sowers vs. Flowers and al.* 617
- 2 Nothing requires the defendant's answer to the plaintiff's interrogatories, to be included in the answer to the petition. *Seal vs. Erwin & al.* 245
- 3 A fact, added by a party, answering interrogatories, is not to be struck off because not called for. *Maxwell & al. vs. Gunn.* 140
- 4 An evasive answer creates a violent presumption that a direct one would be against the interest of him, who is interrogated. *Barrow vs. Sterling.* 55

JURY.

- Part of the facts of a case may be submitted to a jury. *Morris vs. Hatch.* 492
- See APPEAL 5, 11—15, 24, ARRAY.

JUSTICE OF THE PEACE.

- Is not answerable civiliter for a wrong judgment. *Dressen vs. Cox.* 631
- See EXPERTS 2, PRACTICE 11.

LEASE.

- 1 The lessee may be expelled, if he does not pay the rent. *Dressen vs. Cox.* 631

PRINCIPAL MATTERS.

721

- 2 He may be held to bail, although his furniture be seized.
Same case. 631
- 3 On an authentic one, the landlord may obtain an order of seizure and sale, *in limine litis*. *Sterrett vs. Smith.* 450
- 4 On a lease for years, if the tenant quit the premises, the landlord may demand the rent, for the whole term.
Christy vs. Casanave. 451
- 5 A lease at will is determined by a tender of the keys after legal notice. *Chalmers & al. vs. Vignaud's syndics.* 189

LEVEES.

- 1 Must be repaired, according to the regulations of the police jury. *Boulligny vs. Dormenon & al.* 455
- 2 But these have no force, till they be promulgated. *Same case.* *id.*

MANDAMUS.

- The writ of, will not be granted to correct mere errors in form. *Lafon's ex's. vs. Lafon.* 571

MINOR.

- 1 He may consider an illegal sale of his property, by his guardian, as a conversion, and claim the price with interest. *Cheneau vs. Girod.* 612
- 2 A minor above the age of puberty, must be assisted by his curator. *Gassiot vs. Giquel.* 218
- 3 If he be not, the circumstance may, on the appeal, be assigned as an error, apponent on the face of the record.
Same case. *id.*
- 4 When the forms of law have been pursued, in the alienation of a minor's estate, he is considered as having made it, being of full age. *Aguise & al. vs. Gendron & al.* 73

- 5 If a person of age bring suit for a minor, without authority, he will be decreed to pay costs. *Gassiot vs. Giequel.* 218
- 6 The circumstance of a minor's estate being already in the hands of a tutor, could not prevent the legislature from directing it to be administered in a new way. *Aguisse & al. vs. Gendron & al.* 73
- 7 No law requires that in the inventory of a minor's estate the property coming from his father should be distinguished from that coming from his mother. *Same case.* *id.*
- 8 Nor will the court set aside a sale of his property, because such a distinction was omitted. *Same case.* *id.*
- 9 If a sale of minor's estate be sought to be set aside on account of lesion, by a *restitutio in integrum*, the circumstance that some time after the sale, it was sold by the vendee, for a greater price than he gave, will not authorise the restitution. *Same case.* *id.*
- 10 Particularly, if he gave the appraised price. *Same case.* *id.*

MORTGAGE.

- 1 When the deed of, has a clause *de non alienando*, the premises may be sold, at once, in the hands of the vendee. *Nathan & al. vs. Lee.* 32
- 2 But this clause does not prevent a sale, by the court of probates. *De Ende vs. Moore.* 336
- 3 The mortgagee has a right to require the syndics should sell for cash. *Ascinalli vs. Menard's syndics.* 222
- 4 It suffices that the mortgage be recorded, before the cession, to be binding on the creditors. *Same case.* *id.*
- 5 Where the premises have passed into the hands of a third person, the creditor is driven to the action of mortgage. *Layton, s syndics vs. Menard.* 515
- 6 The mortgagee's right under *pact de non alienando* is not repealed by the civil code. *Nathan & al. vs. Lee.* 32

PRINCIPAL MATTERS.

723

- 7 A mortgage does not prevent the vendor and mortgager from pursuing his right, altho it enables the mortgagee to disturb the vendee. *Wyer vs. Winchester.* 69

NOVATION.

- If the creditor give a receipt for a note, in payment of his account, this creates a novation of the debt. *Barron & al. vs. How.* 144

OVERSEER.

- 1 If the defendant promised to deliver to the plaintiff, his overseer, a quantity of provisions for him and family, he cannot withhold them till the end of the year. *Seal vs. Erwin & al.* 245
- 2 It is not a fatal objection to the petition, in which they are claimed in money, that their value is not stated. *Same case.* *id.*
- 3 If A. propose to B. to take charge of his plantation for a fixed allowance, B's going and taking charge of it, is evidence of his assent. *Same case.* *id.*

PARISH JUDGE.

- He is not answerable for error in judgment. *Bouligny vs. Dormenon & al.* 455

See FEES.

PLEDGE.

- The creditor may be compelled to sell the. *Williams & al. vs. Schr. St. Stephens.* 22

PARTNER.

- 1 Endorsing a note due to the firm, after his co-partner's death, transfers all his own interest. *Jones & al. vs. Thorn.* 463

- 2 In a joint speculation, the partner who acts, ought to take the necessary steps to secure payment, or give notes to the person interested with him of the danger of the loss. *Barron & al. vs. Blanchard.* 662
- 3 Otherwise he will be liable to indemnify him. *Same case. id.*
- 4 The expenses of a partner, in prison bounds, for a debt of the firm, are to be borne by it. *Day & al. vs. Morte.* 90
- 5 An injunction improperly sued out against a partner, authorises a suit for damages by the firm. *Mitchel & al. vs. Gervais.* 568
- 6 A surviving partner, being a joint tenant, may resist alone a tortious sale. *Wyer vs. Winchester.* 69

POWER.

- A power to institute a suit, and prosecute to a final judgment, does not include that of making a compromise, or of receiving the money recovered. *Kilgour vs. Ratcliff's heirs.* 292

PRACTICE.

- 1 Jurisdiction once obtained cannot be divested or suspended by any act of the parties, *pendente lite.* *Freeland vs. Lanfear.* 257
- 2 And the rule applies to all the incidents of the cause. *Same case. id.*
- 3 If satisfaction be improperly entered, the legal remedy is by a suit in the ordinary way. *Kilgour & al. vs. Ratcliff's heirs.* 292
- 4 All regulations made under pretence of public good, which interfere with the rights of individuals, should be strictly pursued. *Bouligny vs. Dormenon & al.* 455
- 5 The defendant is entitled to oyer of the instrument sued on. *Maxwell vs. Walker & al.* 211
- 6 Even, when he has not answered, within ten days, if no judgment has been taken by default. *Same case. id.*

- 7 When a party submits certain points on questions of law to the court, the admission of the facts on which they are granted is implied. *Golis vs. his creditors.* 108
- 9 When the parties agree on certain facts and submit others to the jury, the court is to pronounce judgment on the whole, after the contested facts are found by the jury. *Same case.* id.
- 9 The district court cannot proceed in a suit, after the defendant has obtained a stay from the parish court. *Hummin vs. Jones.* 163
- 10 The plaintiff needs not support his petition by his oath. *Bingey vs. Cox.* 473
- 11 The case of a justice of the peace sued for malfeasance in office, forms no exception to the rule. *Same case.* id.
- 12 The district court does not lose jurisdiction of a cause before it, when the defendant dies, without leaving any property, in the reach of the court of probates. *Le Ceme vs. Cottin.* 475
- 13 When the point of fact is doubtful, judgment is given against the party holding the affirmative. *Walton & al. vs. Grant & al.* 494
- 14 A party cannot on a partial set-off enjoin the whole execution. *Palfrey vs. Shaff.* 51
- 15 Nor ought a court enjoin the execution of its own judgment, because the defendant has acquired claims against the plaintiff. *Same case.* id.
- 16 The want of an answer does not authorise the confirmation of a judgment by default, without evidence, when the debt is not liquidated. *Milne vs. Labo & al.* 83
- 17 The same latitude is not allowed, as at common law, to a party who sets forth his claim in the general forms of declaration on common law count. *Stroud vs. Beardslee.* 84
- 18 The act of 1804, regulating proceedings as law require

- a consistenney between the *allegata et probata*. *Same case.* 84
- 19 One suit may be brought on several causes of action, if the be not inconsistent. *Cross vs. Richardson.* 323
- 20 When a right is asserted on one ground and shewn on another, judgment will be given, according to the justice of the case. *Rodriguez vs. Morse.* 358
- 21 A judgment in a sister state, supports the plea of *res judicata*. *Mackee & al. vs. Cairnes & al.* 599
- 22 The plaintiff in his replication, cannot claim the benefit of a judgment, which is opposed to him on an exception. *Same case.* *id.*
- 23 In suits in which there are several defendants, they must all appear and answer, in the parish in which the land lies, altho' neither reside there. *Davenport's heirs vs. Fortier & al.* 374
24. An amended petition need be served but must be answered, or judgment will be taken by default. *Freeland vs. Lanfear.* 257
- 25 If a debtor deny a debt, which he afterwards admits, he shall pay costs, although the judgment authorise how to withhold payment untill he receive security. *Harrang vs. Le Breton.* 361
- 26 The decrees of a court of competent jurisdiction, cannot be examined collaterally by the parties, or those who claim under them. *Kilgour vs. Ratcliff's heirs.* 292
- 27 When the petition charges that the bond sued on, was taken, according to law, and it is set forth and made a part of it, the reading of it cannot be objected to, on an allegation that some of the formalities of the law were neglected. *Duchamp & al. vs. Nicholson.* 672
- 28 In whatever manner one may appear to have bound himself, he shall be bound. *Same case.* *id.*

See OVERSEER 2.

PREScription.

- 1 Is not pleadable to an action for freedom. *Delphine vs. Devere.* 650
- 2 It is interrupted, by an action, in which the plaintiff is non-suited. *Chretien vs. Theard.* 582
- 3 It does not run against him, who cannot sue. *Hernandez & al. vs. Montgomery.* 422
- 4 Actions to set aside contracts as fraudulent, must be brought within three years. *Weimprender's syndics vs. Weimprender.* 591
- 5 But when the debtor is insolvent, it needs not be commenced till after a settlement of the estate. *Same case.* *id.*
- 6 The prescription of three years, bars the claim of an attorney at law for his services. *Morse vs. Brand.* 515
- 7 Prescription does not begin to run, till the condition be accomplished. *Le Changeur vs. Gravier's heirs.* 545

PRISON BOUNDS.

- A debtor in the, may avail himself of the act of 1808, in favour of debtors in actual custody. *Brainard vs. Francis.* 150

See PARTNER 4.

PRIVILEGE.

- None is attached to the claim of a teacher, in an insolvent's school. *Labat vs. Labat's syndics.* 652

PROMISSORY NOTE.

- 1 The endorser of a note, given by the maker for the purchase of a slave, is by payment subrogated to the vender's rights. *Torregano vs. Segura's syndics.* 158
- 2 And he may demand the rescission of the sale, *Same case.* *id.*
- 3 If the petition does not shew notice to the endorser, the

- judgment should not be final, but the plaintiff should be nonsuited. *Foster vs. Randolph.* 495
- 4 Payment of a note or bill, *supra protest*, cannot be made before protest. *Holland vs. Pierce.* 499
- 5 If payment be made before, although the note be afterwards protested, the endorser is not liable. *Same case.* *id.*
- 6 If the maker cannot be found, payment must be demanded at his domicile, if it be within the state. *Insurance co. vs. Shaumburgh.* 511
- 6 The payee, who has endorsed the note, cannot have any action on it, even for the use of the endorser. *Moore vs. Maxwell & al.* 249
- 8 In the description of a note, an error in the fractional part is fatal. *Pille vs. Mollere.* 666

See PARTNER 1.

RECONVENTION.

Although an unliquidated demand cannot be pleaded in compensation, it may often be opposed by the way of reconvention. *Agasse & al. vs. Gendron & al.* 72

RESPITE.

- 1 The laws relating to respites, which were in force in Louisiana, before the adoption of the constitution of the U. S. are not repealed by that instrument. *Chalmers & al. vs. White & al.* 315
- 2 After a respite, the debtor cannot legally give any preference to a creditor. *Brandt & al. syndics vs. Shaumburgh.* 329

SALE.

- 1 Altho' the clause of warranty relates to a defect of title, it is not to be presumed that the parties to a sale, inten-

PRINCIPAL MATTERS.

729

- ded there should be no warranty as to redhibitory defects. *Castellano vs. Peillon.* 466
- 2 The vendor is affected by a judgment against the vendee. *Same case.* *id.*
- 3 A suit to set aside a sale is well brought against the party, who received the property. *Guidry vs. Gricot.* 13
- 4 If the vendee promise to pay the price to the vendor of his own vendor, he cannot delay the suit of the first vendor, till he obtain judgment against the second, on an alleged deficiency of quantity. *Desblieux vs. Derbon-neux.* 216

See EVIDENCE 4, 5, 11, 12.

SEQUESTRATION.

Sequestered property, when there is judgment of non-suit, is to be replaced, in the hands of him from whom it was taken. *Hasluck & al. vs. Morgan.* 9

SLANDER.

- 1 In an action of slander, it is sufficient to prove the substance of the words charged. *Freeland vs. Lanfear.* 257
- 2 But a charge of robbing the defendant of his tobacco, is not supported by evidence of its being dishonestly obtained. *Same case.* *id.*

SLAVE.

- 1 When the verdict finds that a slave, who has died, had the consumption, at the time of the sale, the disease may fairly be presumed to have been incurable. *Desdunes vs. Miller.* 53
- 2 If the owner of a slave remove him, from Kentucky, into Ohio, *animo morandi*, she becomes free *ipso facto*. *Lunsford vs. Coquillon.* 401

- 3 The *bona fide* vendee of a stolen slave, cannot compel the owner to restore his price. *Harper vs. Destrehan.* 389

SURETY.

- 1 An auctioneer's sureties are liable for goods sold by him & his partner. *Kuhn & al. vs. Abat & al.* 162
- 2 If a suit be brought against the principal and sureties and he fail in the mean while, judgment may be obtained against them. *Same case.* *id.*
- 3 The surety in a bond, in which it is stated that the principal has been appointed auctioneer, is estopped from denying that he was. *Duchamp & al. vs. Nicholson.* 672
- 4 The sureties of an auctioneer are bound for the payment of the amount of the goods sold, after the date of the bond, although they were delivered to him before. *Same case.* *id.*

UNITED STATES.

- They have no lien for their debts, but a right of priority of payment, out of the funds in the hands of the representatives of their insolvent debtors. *Jackson vs. Oddie.* 555

WITNESS.

- 1 The vendee may offer the notary, who drew the sale, to prove that the vendor was in possession of an act, un- which he claimed title to the slaves sold, and which was referred to in the sale. *Carian vs. Rieffel.* 619
- 2 The testimony of an insolvent cannot be received, in an action between a creditor and the syndics. *Seghers vs. Moulton's syndics.* 608
- 3 The deposition of a witness taken at a different time and place than those mentioned in the notice cannot be read. *Gilly & al. vs. Logan & al.* 198
- 4 Service of the interrogatories to be put to a witness does



PRINCIPAL MATTERS.

731

not dispense with notice of the time and place of examination. *Bozman vs. Flowers.*

268

A district judge cannot be examined as a witness in his own court. *Ross & al. vs. Buhler & al.*

312

The criminality of a witness cannot be proved otherwise than by the record of his conviction. *Castellano vs. Peillon.*

466

See EVIDENCE 8, AGENT 1 & 2.